IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO. 475 OF 1988

Tanaji @ Mama Ramchandra Shinde
aged about 24 yrs. Agriculturist,
Residing at Kalgaon, Taluka Karad,
District Satara. .. Appellant
(Org.Accused)

Vs.

The State of Maharashtra .. Respondent

Ms. Sharmila Kaushik, Advocate appointed for the appellant.
Ms. Usha Kejriwal, APP for Respondent-State.

CORAM : S.S. PARKAR & R.S. MOHITE, JJ.

Date : August 23 & 24, 2004.

ORAL JUDGMENT (Per S.S. Parkar,J.):

1. This appeal is filed by the appellant-accused challenging the Judgment and Order dated 5th May, 1988 delivered by the Sessions Judge, Satara convicting the appellant for offence under Section 302 of IPC and sentencing him to imprisonment for life in Sessions Case No.64 of 1987.

2. Prosecution case briefly stated is as follows:-

The incident had taken place on 10/12/1986 between 7 p.m. to 7.30 p.m. in the land of one Bhiku Rama Nikam of Apshinge when the murder of one Kisan

Bhau Kumbhar had taken place. Both the accused as well as the deceased were residents of village Kalgaon. They were agriculturists. Deceased was staying in the house of one Sarjerao Baba Pawar in that village along with his wife PW 1 Kusum and three children. He was in the service of one Jaysing Patil. His duty was to start the electric motor fixed to the well and to water the crops. At that time valve of the electric motor of Jaysing Patil was stolen and the deceased Kisan was suspecting accused Tanaji having stolen it. The said valve was later on traced in front of the house of Kisan. Because deceased had suspected accused there had been quarrel between the two when the accused had held out threats to the deceased. On the date of the incident in the evening when deceased was returning home, accused had assaulted him in the land of Bhiku Nikam, as a result of which the deceased had received injuries in his abdomen. He walked some distance and thereafter fell near the house of barber Bhagwat Taware. When his wife PW 1 Kusum learnt that her husband was lying injured, she went to the said place and found her husband lying with stab injuries. On inquiry from husband, she was told by injured Kisan that accused had assaulted him. That time brother of accused Bapu had also arrived there. Thereafter PW 1 Kusum with

the help of Bapu, Ramrao and Uttam took the injured to the Cottage Hospital in Indoli. The doctor who examined Kisan in the Cottage Hospital recommended that the injured should be taken to Karad Hospital. The injured was therefore removed to Karad Hospital where he was declared dead by the doctor. The complaint of PW 1 Kusum, wife of the deceased, was lodged at Exh.13 and the crime was registered. The scene of offence panchanama (Exh.9) was drawn at about 7 a.m. in the following morning. The statements of witnesses were recorded. The accused was absconding. The post-mortem examination was performed on the dead body. Accused came to be arrested on 18/12/1986 from hillock at Padali on the basis of information received by the Investigating Officer. Immediately after the accused was arrested he made a statement and his blood stained clothes and knife were recovered at his instance under the panchanamas Exhs.15 and 16. The clothes of the deceased, the clothes of the accused and the knife along with other articles seized under the spot panchanama were sent for chemical examination. After the investigation was over, charge-sheet came to be filed and the case was committed to the Sessions Court.

3. Before the Sessions Court, charge was framed

against the accused for offence under Section 302 of IPC, to which accused pleaded not guilty. On behalf of the prosecution 13 witnesses were examined, who are as follows:-

PW 1 is Kusum Kisan Kumbhar, the wife of the deceased, who has deposed about the previous quarrel and enmity between the deceased and the accused and also about the oral dying declaration made by the deceased to her. PW 2 is Natha Sadu Kamble, who acted as panch for the memorandum of statement by the accused and the seizure of clothes of the accused and knife at the instance of accused. PW 3 is Uttam Shamrao Chavan, who had accompanied PW 1 Kusum to take Kisan to Indoli Cottage Hospital and thereafter to Karad Hospital. PW 4 is Vasant Dadu Chavan before whom the accused made statement that he had assaulted the deceased but he had turned hostile. PW 5 is Bhiku Kondiba Chavan who had seen Kisan coming limping after he was injured and accused going away along the way to the river but he had also turned hostile. PW 6 is Rafik Badsha Mulla, the student who lent his shirt to the accused on the date of the incident for changing his blood stained shirt. PW 7 is Vivek Pandurang Gurav, who was examined to depose about the quarrel between the deceased and accused but he had turned

hostile. PW 8 is Prakash Vitthal Yadav, who was examined to depose about the clothes worn by the accused on the date of the incident but he had also turned hostile. PW 9 is Shashikant Bhargav Jantre, who is the student who lent the pant to the accused on the date of the incident for changing his soiled pant. PW 10 Shankar Bandu Patil is the relation of the accused, who has deposed about the criminal case for theft of mangalsutra having been filed against the accused. PW 11 is Dr.Pandurang Pawar, who performed autopsy on the dead body. PW 12 is Shivaji Jaywant Bhosale, the Head Constable, who investigated the theft case against the accused lodged by PW 10. PW 13 is PSI Sadashiv Shankar Chavan, who investigated the case and filed charge-sheet. Apart from the accused having been examined under Section 313 of Cr.P.C. he had also filed a written statement (Exh.43). The defence of the accused was that PW 1 Kusum the wife of the deceased had falsely involved him at the instance of Ramrao Chavan on whose land she is working, who was on enemical terms with him. According to him he was wearing his brother’s clothes and changed the clothes by wearing his friends’ clothes as he had to go to Bibvi to bring his mother from there.

4. After considering the entire evidence on record

the Sessions Court convicted the appellant-accused for offence under Section 302 of IPC and sentenced him to imprisonment for life. The said order of conviction and sentence is impugned in this appeal.

5. We heard the learned advocate appointed on behalf of the appellant at length and also the learned APP appearing on behalf of the State. It may be mentioned here that present appeal was filed by the appellant through his advocate. As his advocate had expired notice had been served on the appellant on 9th March, 2003 to engage another advocate but the appellant did not take any steps to engage any other advocate though the matter was on board for hearing from time to time. This Court, therefore, by the order dated 10th August, 2004 directed the office of the High Court to appoint a competent advocate on behalf of the appellant to conduct this appeal and the appeal was adjourned to 23rd August, 2004. Pursuant to the said order the office of the High Court appointed Ms. Sharmila Kaushik on behalf of the appellant to argue this appeal.

6. Ms. Kaushik appearing for the appellant firstly contended that there is no independent witness examined on behalf of the prosecution who must have

seen the incident of assault having taken place in the open place. Secondly, she argued that Sitabai, whose name has been referred to by PW 1 complainant, has not been examined nor the barber, near whose house deceased was lying injured, has been examined and, therefore, the prosecution evidence should not be believed in the absence of any independent witness. She also contended that brother of accused ought to have been examined as he was present when oral dying declaration was made by the deceased, as deposed to by the complainant PW 1. She also contended that the deceased could not have made oral dying declaration after walking the distance of about 1/2 km. after he was injured in stomach. She also contended that the employer of the deceased was not examined to prove the motive.

7. In order to prove the guilt of the accused, prosecution is relying on the following circumstances:-

Firstly, there is motive. Secondly, oral dying declaration of the deceased made to his wife PW 1 Kusum and Bapu, the brother of the accused. Thirdly, recovery of the blood stained clothes and the knife at the instance of the accused and lastly, accused

absconding from his house for a period of eight days until he was arrested on a hillock.

8. So far as the motive and the oral dying declaration are concerned, there is evidence of wife of the deceased Kusum who has been examined as PW 1. She has deposed that she was residing along with her husband and three children in village Kalgaon. Her husband was working as agricultural servant with one Jaysing Patil. His work was to start electric motor for watering the crops. The valve of the electric motor of his master was lost about a year before the incident and the deceased had suspected accused having stolen the same. That valve was ultimately traced. The accused was annoyed as the deceased had suspected accused having stolen the same. The evidence about the motive deposed to by Kusum PW 1 is corroborated by the F.I.R. lodged by her after midnight on the day of the incident in question, in which she has stated that her husband was knowing that accused had stolen the said valve and he had told the son-in-law of his employer about the same. The accused had, therefore, gone to the house of deceased and questioned deceased Kisan as to why he had given accused’s name for having stolen the valve. That time accused had also threatened that he would assault the deceased. This

evidence has not been demolished in the cross examination of the witness.

9. In order to show that accused was in the habit of committing theft, the prosecution has also led the evidence of PW 10 Shankar Patil, who had lodged complaint against the accused for the theft of mangalsutra of his wife. There is distant relationship between the witness and the accused. There is also evidence of Head Constable Shivaji Bhosale PW 12 who had investigated the theft case against the accused. He has deposed that he had investigated that theft case and chargesheet was filed against the accused for the offence of theft which was pending in the court of JMFC, Karad.

10. As regards the oral dying declaration made by the deceased is concerned, PW 1 Kusum has deposed that on the date of the incident when she returned home in the evening, her daughter Rekha called her stating that Sitabai wanted to say something. When PW 1 went to enquire with Sitabai she told her that her husband was lying in front of barber shop. She, therefore, went to the said place and found her husband Kisan lying on the ground. He was having stab injuries on his chest and on enquiry by her he told her that Mamya i.e. the

accused, the brother of Bapu, assaulted him. At that time Bapu, the brother of the accused, also came there and asked Kisan what had happened, on which her husband told him that his brother Mamya had assaulted him. Thereafter she along with Bapu, Ramrao and Uttam took injured Kisan to Cottage Hospital in Indoli. After examining the injured, doctor told them to take Kisan to Karad Hospital and, therefore, he was taken to Karad Hospital, where he was declared dead. Her deposition in the court as regards the oral dying declaration is corroborated by the immediate F.I.R. lodged by her in the midnight at the police station. There is no material contradiction brought on record in respect of the same. On the basis of F.I.R. lodged by her crime was registered against the accused for offence of murder at the police station. Her version is supported by Investigating Officer Sadashiv Chavan PW 13 who has deposed that on 10/12/1986 he received phone message from Karad Police Station at 10 p.m. that Kisan Kumbhar of Kalgaon had died due to injuries. He deputed police officers to Kalgaon to see what was the matter but they returned as concerned persons were not available there. At 2 a.m. in the night he received message on telephone from the Karad Police Station that the wife of deceased had arrived and, therefore, he immediately went to Cottage

Hospital and recorded the complaint of PW 1 Kusum in the hospital and instructed PSI Naphad to send the body for post-mortem and collect the blood of the deceased. He then went to Umbraj for registration of the crime. In the morning he drew the spot panchanama Exh.9. Thus, wife who was the first person to see her husband after she learnt about his lying in injured condition was told by her husband that it was accused who had assaulted him. The injured Kisan had also told Bapu, the brother of accused, on enquiry that accused had caused injuries to him.

11. On behalf of the accused it is argued that there is no independent witness examined on behalf of the prosecution and the court should not believe the solitary testimony of the wife of the deceased about the oral dying declaration as she is an interested witness. It is argued that apart from Bapu, Ramrao and Uttam, who had accompanied Kusum PW 1 to take the injured to the hospital, should have been examined. First of all the wife cannot be considered as an interested witness in such cases. Her deposition is corroborated by the F.I.R. which was lodged on the same night. According to her own testimony out of Ramrao, Uttam and Bapu, the three persons who had accompanied her to take her husband to the hospital,

deceased told Bapu, brother of the accused that it was his brother who had assaulted him. Surely Bapu cannot be expected to give evidence against his own brother. PW 1 has not stated that the oral dying declaration was made before Ramrao and Uttam as well. Having learnt about the assailant, wife would not again question her husband about his assailant after Ramrao and Uttam arrived at the place where her husband was lying. Bapu, the brother of the accused, had come to the said place immediately after Kusum had reached there. Ramrao and Uttam, in all probability must have learnt about the assailant from Kusum herself when she went to call them for help. From the injuries which the deceased had received he might not have been in a position to speak thereafter nor Ramrao or Uttam would be interested in asking him after they must have learnt the name of the assailant from Kusum. Kusum cannot be expected to falsely state that her husband had told Bapu also who was the brother of the accused about the name of the assailant. Kusum would not be interested nor was she expected to falsely implicate the accused as the assailant of her husband without the deceased having told her that it was the accused who had assaulted him. She would not implicate accused falsely allowing the real assailant to escape. Even the learned Sessions Judge has observed that he

had perused the case diary and from there he found that there was no statement of any witness before whom the deceased made statement and the only person besides Kusum to whom the deceased had told the name of the assailant is Bapu, who was the elder brother of the accused. Ramrao and Uttam were called by Kusum herself from their houses whose houses were near the place where Kisan was lying in injured condition.

12. The prosecution had led the evidence of PW 5 Bhiku Chavan but he had turned hostile. He had deviated from his police statement that he had seen injured Kisan coming limping near the place of incident and accused going towards Perale along the way to the river. The evidence of PW 5 would have been important in as much as he had seen the accused going from the place of incident immediately after the incident, but he had turned hostile. One witness i.e. Uttam Chavan, who had accompanied Kusum to take injured to the hospital has been examined as PW 3. He had gone to the place after hearing commotion. He saw Kisan had fallen down and was moaning and the wife of Kisan and Bapu, the brother of accused, were present there. He along with Ramrao, Bapu and PW 1 Kusum took injured to Cottage hospital, Indoli and from there to Karad hospital. He seems to have come at that place

subsequently when the injured was moaning in pain, which would show that Kisan was still alive. One more witness Vasant Chavan when examined as PW 4 had also turned hostile, though in his police statement he had identified the shirt and pant, which were worn by the accused on that date. The accused had made extra judicial confession to him. Thus, it cannot be said that the prosecution had not examined independent witnesses. The evidence of PW 4 Vasant Chavan to whom the extra judicial confession was made by the accused on the day of the incident and also PW 5 Bhiku Chavan who had seen the accused going towards Perale along the way to the river just after the incident would have been useful witnesses to the prosecution but they had turned hostile.

13. Thus, the prosecution had tried to examine all the concerned witnesses and has not omitted to examine any material witness who would have thrown light on the prosecution case or the incident in question. The prosecution cannot be faulted for not examining Bapu, the elder brother of accused, to whom the deceased had made oral dying declaration and named accused as his assailant, as he was not expected to support the prosecution case. Not only that, from the observations of the trial court it appears that he had

not given statement before the police and, therefore, there was no question of examining him as a witness of the prosecution. But for that reason PW 1 wife of Kisan cannot be disbelieved. Unless the deceased had named the assailant before Bapu, the brother of accused, she would not have stated so either in the complaint or in her deposition. Thus, we find no reason to disbelieve oral dying declaration made by Kisan to Kusum and Bapu, as deposed to by PW 1 Kusum. It is well settled that if the oral dying declaration is believed, and we have no reason to disbelieve the same, the accused can be convicted on the basis of the same. The evidence of Kusum is also corroborated by other circumstances on record as discussed hereinafter.

14. After the arrest of the accused on 18/12/1986, he volunteered to disclose the place where he kept his clothes worn at the time of incident and the weapon used by him for assaulting the deceased and thereafter the blood stained clothes and knife were recovered at his instance. Prosecution has examined Natha Kambale PW 2 who was panch for discovery of blood stained clothes and knife at the instance of the accused. He has proved the panchanama Exh.15-A about the memorandum of statement regarding the clothes and

Exh.15-B the panchanama of seizure of clothes. He has also proved the panchanama Exh.16-A about the memorandum of statement with regard to the hiding of knife by the accused and the recovery panchanama Exh.16-B.

15. The clothes were hidden by the accused at Karad with his friends who were the students. They were from his village. Accused asked Rafik to hand over the clothes given by the accused. The said clothes were removed from the roof. They were tied together. Those clothes were shirt and pant having stains of blood on the arms of the shirt and on the bottom of the pant. They are article nos.22 and 23. The recovery of these articles, apart from being deposed to by panch and corroborated by IO PW 13 PSI Sadashiv Chavan, is also supported by Rafik who has been examined as PW 6. He has deposed that about 1 or 1 and 1/2 years before at 9 p.m. accused had gone to his place where he and his inmates Ananda, Dipak and Kashinath were present. Rafik was residing in room no.2. Accused first went to room no.6 of Dada Mugutrao Jadhav and others. He took the pant of Shashikant Jantre, another student and changed his own pant. Thereafter Dada Mugutrao Jadhav brought the accused to Rafik’s room. Accused asked for shirt from

Ananda. Ananda gave his shirt but it did not fit him and, therefore, accused requested Rafik to lend his shirt as he wanted to go to his relative and his own shirt was soiled. Rafik gave his shirt to accused and accused kept his pant and shirt in his room on the loft. He has given the colour of the pant and shirt of the accused and has identified article nos.22 and 23 which were recovered at the instance of the accused from the said room. Similarly, prosecution has led evidence of PW 9 Shashikant Jantre who had lent his pant to the accused. He has also deposed about the accused having taken shirt of Rafik and put on the said shirt on his person. Thus, PW 6 and PW 9 who are students and absolutely independent witnesses have also supported the case of the prosecution about recovery of his soiled clothes from the place of these two witnesses. The accused had changed the clothes on the pretext that they were soiled and he wanted to go to his relative. There was no reason for the accused to go to their places to change his clothes nor there was any reason for him to go to another village in the night to bring his mother back. He could have gone there next morning. Actually, accused wanted to change his clothes which were soiled with the blood stains of the deceased and, therefore, he went and changed the clothes at the place where the students

were residing as they would not have suspected anything foul. The shirt (article 23) was sent to the C.A. and as per C.A. report Exh.36 the shirt was stained with blood group "B" which is that of the deceased.

16. Then there is evidence of recovery of blood stained knife at the instance of accused from the house of his uncle. The knife was taken out by him from among the heap of books kept on the loft after removing the books. It was in folded position and after opening it blood was noticed on the blade. The said knife was seized and produced before the court as article no.24. As per C.A. report Exh.36 the knife was found stained with blood group "B" which is that of the deceased. C.A. report Exh.36 shows that number of articles including earth seized from the place of incident, pieces of bed-sheet, carpet, towel, the clothes of the deceased, the clothes of the accused and the knife were sent for chemical examination. The clothes of the deceased were stained with human blood of group "B" which was also found on the shirt of the accused and the knife recovered at the instance of the accused. The prosecution had also taken the blood of the accused which, according to the C.A. report Exh.34 was of group "O". Similarly

prosecution had taken the blood of the deceased and sent to C.A. As per the C.A. report Exh.32 blood group of deceased was "B".

17. The recovery of clothes of the accused at his instance on the very first day of his arrest is sufficiently proved. As per C.A. report blood of group "B" was found on the shirt of the accused as well as on the knife recovered at his instance. The said blood group was of the deceased which was found on the clothes of the deceased as well as from the blood taken in phial from the body of the deceased. Thus the oral dying declaration deposed to by Kusum PW 1 is sufficiently corroborated by the strong circumstances of recovery of shirt of the accused and the knife at his instance which were also stained with blood group of the deceased and the blood group of the accused is different i.e. "O".

18. It is relevant to point out that accused in his 313 examination admitted that he had exchanged his clothes at the place where PWs 6 and 9 were residing. He has admitted that he had put on the shirt of PW 6 Rafik Mulla and pant of PW 9 Shashikant Jantre. He has also admitted recovery of his clothes from the said witnesses at his instance. Significantly, he has

also admitted in answer to Question No.34 in his 313 examination that when his clothes article nos.22 and 23 were seized there were stains of blood on both the articles. He has, however, not explained how those blood stains were found on those clothes. He has also admitted that his blood was collected. His defence, however, is that on the date of the incident he was working in the field throughout the day and at about 7, 7.30 p.m. he went home and took his meal when his brother Bapu told him to go to Bibvi in Patan Taluka and bring their mother. Since his clothes were soiled he put on shirt of his brother Bapu and went to the rooms of Rafik and Shashikant at Karad and asked Shashikant to lend pant and changed his pant. As the shirt of Shashikant did not fit him, he asked Rafik to give his shirt and changed his shirt also and thereafter left his own clothes in that room. The said defence is on the face of it unreliable. There was no reason for him to put on the clothes of his brother which were soiled with blood and then go to his friends' place and ask them to lend their clothes. He could have put on his clean clothes in his own house. There was no reason for him to go to Patan Taluka in the night time to bring his mother. According to him he stayed there for four days, yet as per the prosecution case accused was not available for

arrest from his house for a period of eight days and he was ultimately traced on a hillock in Padali on the basis of information received by the police on 18/12/1986. The defence taken in his 313 examination as well as in his written statement dated 2/5/1988 filed in the court is on the face of it unbelievable and false.

19. The next circumstance relied on by the prosecution is about his movements and absconding after the commission of the crime. The accused was not available for arrest for a period of eight days until, on the basis of the information received by the police, he was apprehended on a hillock in Padali. His defence that he had gone to Patan Taluka to bring his mother is apparently false. Firstly, he would not leave his own house in the night to go to that place. Secondly, he would not leave his own house in soiled clothes and then approach his friends, who were students, to borrow their clothes for the purpose of going to the village where his mother was residing. Though he had to bring his mother on the following day he stayed there for a period of four days, but even after four days he was not available for arrest in his house and was arrested from the hillock by the police. Thus, his disappearance from his house on the night of

the incident immediately after the incident and thereafter absconding for a period of eight days until he was arrested from hillock, is yet another circumstance which shows the guilty mind of the accused. Of course that circumstance by itself cannot be the ground for conviction of the accused. But the oral dying declaration made to Kusum PW 1 by the deceased which is deposed to by the witness and was mentioned in the F.I.R. lodged immediately after the deceased was declared dead at Karad hospital corroborated by the recovery of blood stained shirt of the accused and the knife at his instance which were stained with blood group of the deceased, leave no doubt about the involvement of the accused in the murder of Kisan, husband of PW 1 Kusum.

20. Prosecution has led evidence of PW 11 Dr. Pandurang Pawar who had performed autopsy on the dead body. As per his evidence he noticed following 8 injuries on the dead body :-

> 1. Stab wound over Lt. 7th inter-costal space near cartilage, going into abdomen, omentum protruding through, would 1 1/2" x 1/2 transverse blood, clots present.
>
> 2. Stab wound in 5th inter-costal space, infra-axillary area and medially, Rt. side 1" x 1/2" going in chest, transverse, blood clots

present.

3. Stab wound in 7th inter-costal space, transverse 1" x 1/2" going into the chest; infra-axillary area Rt. side, clots present.

4. Three vertical incised wounds over Rt. fore-arm anteriorly, medial one-third, 2 on lateral side, one on - medial side each 1" x 1/4" skin deep.

5. Vertical stab wound in Lt. para-vertebral region 1" x 1/2" x 1/2" clots present, near lumber-3.

6. Four incised wounds around left elbow, dorsally, 2 transverse on medial side of the fore-arm and 2 vertical on lateral side, one on fore-arm, other on arm 1" x 1/4" x skin deep.

7. Two minor contusions over left fore-head, black in colour.

8. Lower lip diffused abrasion.

In his opinion, injuries nos.1 to 6 were stab wounds and the rest of the injuries were caused by hard and blunt object. On internal examination he found that pleura was punctured at stab sites. He noticed both sided haemothorix, left traumatic intestines hermation through left copes diaphragm. The heart was empty. Peritoneum was punctured at stab sites. Cavity was containing blood which is known as haemo-peritoneum. The large intestine had descending column punctured. The right lobe of the liver had a stab from right side 1/2" x 1/2" x 1". In his opinion cause of death was shock and asphyxia due to stab

wounds and injuries. According to the doctor all the injuries were cumulatively sufficient in the ordinary course of nature to cause death.

21. It is argued on behalf of the appellant that deceased would not have been in a position to make oral dying declaration to his wife PW 1 when he was stabbed in the stomach and, therefore, the evidence of PW 1 Kusum should not be believed. Apart from the fact that Kusum had no reason to falsely implicate the appellant, the deposition of the doctor shows that the person would be in a position to talk with the injuries suffered by the deceased, even if he had haemorrhage and exertion due to walking for some distance, which appears to be about 700 ft., from the place where he was initially assaulted. It does not appear that the deceased was assaulted at one place only. He must have made movements and tried to go away or run away from the accused when he was being assaulted with the knife and the accused must have chased him and assaulted him and ultimately when he fell down, the accused must have run away from the scene. The spot panchanama Exh.9 does show that the blood was found on various places from near the shop of barber to the place where the injured was lying. There was no injury caused either to heart or lungs of

the deceased as per the post-mortem notes. Dr. Pawar has categorically deposed that he did not agree that because of the exertion the consciousness of the person after sustaining injuries would be less in one hour. He has also deposed that there would be decrease in consciousness if the person comes down the river, crosses it and again climbs but decrease would not be appreciable. He has stated that after infliction of the injuries which were suffered by the deceased he would be conscious for about one hour and he would be in a position to make statement. Thus medical evidence is consistent with the evidence of PW 1 to whom oral dying declaration was made by the deceased immediately after the incident.

22. There is, therefore, ample evidence to prove that it was the accused who had assaulted the deceased with a knife. He had stabbed him in the stomach. As a result of multiple injuries suffered by the deceased he had died. The injuries suffered by the deceased were sufficient in the ordinary course of nature to cause his death which attract the offence under Section 300 of IPC punishable under Section 302 of IPC. The case does not fall under any of the exceptions and, therefore, it cannot be brought under the purview of Section 304 of IPC as regards the

punishment is concerned. In the circumstances, we cannot find fault with the conviction of the accused recorded against him by the trial court for offence under Section 302 of IPC and the sentence of life imprisonment which is the minimum punishment under the said provision.

23. In the result, the appeal is dismissed and the order of conviction and sentence recorded against the appellant-accused by the Sessions Judge, Satara on 5th May, 1988 in Sessions Case No.64 of 1987 is confirmed. The appellant-accused shall surrender to his bail bonds within a period of two weeks from today.

(S.S. Parkar, J.)

(R.S. Mohite,J.)